

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

RICHARD J. TINDAL,

Plaintiff,

DECISION AND ORDER

04-CV-6312L

v.

GLENN S. GOORD, et al.,

Defendants.

Plaintiff, Richard J. Tindal, an inmate in the custody of the New York State Department of Correctional Services, has moved for a preliminary injunction. Plaintiff asks the Court to order defendants to have plaintiff examined and treated by an outside medical specialist.


The motion is denied. In order to obtain preliminary injunctive relief in this circuit, a movant must show: (1) irreparable harm in the absence of the relief sought and (2) either (a) a likelihood of success on the merits or (b) sufficiently serious questions going to the merits to make them a fair ground for litigation and a balance of hardships tipping decidedly in the movant's favor. *Zervos v. Verizon New York, Inc.*, 252 F.3d 163, 172 (2d Cir. 2001); *ABKCO Music, Inc. v. Stellar Records, Inc.*, 96 F.3d 60, 64 (2d Cir. 1996). Plaintiff has not carried that burden. Furthermore, "[a] prison inmate has no independent constitutional right to outside medical care." *Boomer v. DePerio*,

405 F.Supp.2d 259, 264 (W.D.N.Y. 2005) (quoting *Roberts v. Spalding*, 783 F.2d 867 870 (9th Cir. 1986)).

CONCLUSION

Plaintiff's motion for a preliminary injunction (Docket #110) is denied.

IT IS SO ORDERED.



DAVID G. LARIMER
United States District Judge

Dated: Rochester, New York
September 6, 2006.